

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JANET HARVEY and JOSEPH HARVEY,

Plaintiffs,

v.

PERMANENT MISSION OF THE
REPUBLIC OF SIERRA LEONE TO THE
UNITED NATIONS, EMPIRE GROUP
NYC, LLC, and DAVID I. MONTESI,

Defendants.

Civil Action No. 21-CV-4368 (ER)

CONSENT ORDER

This matter is now before this Court on a letter motion submitted by the Plaintiffs Janet Harvey and Joseph Harvey (“Plaintiffs”) with consent from the Defendants Empire Group NYC, LLC and David I. Montesi (collectively, “Defendants”). After reviewing the letter motion and the representations made therein, it is this 7th day of June, 2021:

ORDERED that Plaintiffs and Defendants shall enter into an access agreement by June 7, 2021 for the Defendants to enter onto Plaintiffs’ property to install a temporary chimney extension. Plaintiffs must approve the plans, and the New York City Department of Buildings (“DOB”) must issue a permit before any construction takes place. The plans will be provided to the Plaintiffs by Friday, June 11, 2021; the plans will be filed with the DOB within three (3) business days of Plaintiffs’ written approval; the construction shall take place within three (3) business days of the DOB’s issuance of a permit. The access agreement must be consistent with the New York City Construction Code (“Code”). Reentry upon the Plaintiffs’ property shall be based on mutual acceptance of the access agreement; and it is

FURTHER ORDERED that, prior to the issuance of a temporary certificate of occupancy, a permanent chimney extension shall be installed, pursuant to plans approved by the Plaintiffs and under a permit issued by the DOB; and it is

FURTHER ORDERED that details of planned roof protection in compliance with the Code shall be provided to Plaintiffs by Tuesday, June 8, 2021. Within three (3) business days of Plaintiffs' approval, the roof protection shall be installed on Plaintiffs' roof in keeping with the details and to the satisfaction of the DOB; and it is

FURTHER ORDERED that, by Friday, June 4, 2021, Defendants shall remove all debris from inside of the property ("Headquarters") of the Defendant the Permanent Mission of the Republic of Sierra Leone to the United Nations ("Mission"). Defendants shall take photographs of the back, front, and middle of each floors, to the extent permitted by the Mission, to demonstrate to the Plaintiffs that all debris has been removed from the inside of the Headquarters. Defendants shall also inform the Plaintiffs when all of the debris from the outside of the Headquarters is removed; and it is

FURTHER ORDERED that, on Tuesday, June 8, 2021 or another time otherwise agreed upon by both Plaintiffs and Defendants, Defendants shall place a shield behind the underscaffold light in the Plaintiffs' backyard to prevent the light from shining into the Plaintiffs' home; and it is

FURTHER ORDERED that, by Friday, June 4, 2021, Defendants shall ensure that there is proper entry and egress from the street and to and from the roof of the Headquarters; and it is

FURTHER ORDERED that, when the DOB stop work order is lifted in full, Defendants shall inform the Plaintiffs. Defendants will make best efforts to get the stop work order lifted in full by June 11, 2021. Upon the DOB stop work order being lifted in full, the Defendants shall

enclose any openings in the elevator shaft. The initial closures will be temporary in nature pending completion of the shaft. The Defendants also shall provide a temporary roof to enclose the top of the elevator shaft. Defendants shall take photographs, as permitted by the Mission, of the enclosures and temporary roof for the Plaintiffs to confirm with their engineer that such enclosures are secure, safe, and up to Code; and it is

FURTHER ORDERED that, upon the DOB stop work order being lifted in full, the Defendants shall properly flash and weatherproof the space between the Plaintiffs' home and the Headquarters and ensure proper drainage at the Headquarters on all floors. In addition, the Defendants will close all openings in the Headquarters' side of the party wall as required by Code; and it is

FURTHER ORDERED that, upon the DOB stop work order being lifted in full and an access agreement being fully executed, the Defendants shall submit signed and sealed engineering plans to the Plaintiffs for a permanent extension of the chimney for Plaintiffs' approval. Turn-around time and approval by Plaintiffs will not be unreasonably delayed or denied. Any conflicts between engineers as to Code compliance will be resolved by the DOB; and it is

FURTHER ORDERED that, at such time as the Mission is prepared to proceed with its construction, the Plaintiffs will not unreasonably deny access to the Plaintiffs' home pending compliance with the following requirements: (1) Plaintiffs to be provided with an access agreement by Defendants to enter onto Plaintiffs' property for any further construction; (2) Plaintiffs to be provided with DOB-approved plans for the extension of their chimney for review in compliance with the Code; (3) Plaintiffs to be provided with construction site safety plans specifically delineating the temporary property protection materials and structures that will be

provided on the Plaintiffs' property during construction; and (4) Plaintiffs to be provided with a construction schedule of the work on the Headquarters every two (2) weeks showing a two-week look-ahead. In conducting any future construction, the Defendants will take all steps, and necessary precautions as required by the Code, to not harm Plaintiffs' property and ensure that any construction activities do not encroach on Plaintiffs' property.

Nothing in this Consent Order shall prejudice the Plaintiffs' rights, or allegations, against the Mission if and when the Mission appears in this litigation.

By entering into this Consent Order, Defendants are not admitting liability, fault, or responsibility for anything contained herein, nor waiving any defenses they may have, at law or in equity to the allegations contained in the Complaint. So long as Defendants make reasonable best efforts to obtain the necessary approvals or authorizations from the Mission and inform Plaintiffs of their efforts, Defendants shall in no way be prejudiced or held at fault by the failure of the Mission to act and/or provide authorizations where required for Defendants to comply with this Consent Order; and it is

IT IS SO ORDERED.

DATED THIS 7th day of June, 2021

The June 23, 2021 hearing is hereby adjourned.

By: 
Hon. Edgardo Ramos
UNITED STATES DISTRICT JUDGE